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MAY 29 1973

MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

NO. 72-6830

ROBERT V. PACE
Petitioner,

v.

LEVIN H. CAMPBELL, ET ALS
Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

Submitted by:

Robert V. Pace
P. O. Box 172
Lexington, Ma. 02173
617-275-8422

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

NO. .....

ROBERT V. PACE

Petitioner

v.

LEVIN H. CAMPBELL, ET ALS

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

TO THE HONORABLE, THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Petitioner, Robert V. Pace, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the First Circuit entered in the case of Robert V. Pace, Appellant v Levin H. Campbell et als, Appellees, No. 73-1001, in that Court on February 28, 1973.

OPINION BELOW

The February 28, 1973, opinion of the United States Court of Appeals for the First Circuit, dismissing the petitioner's appeal as frivilous, is included in the Appendix on page A-1.

JURISDICTION

The Court's jurisdiction is invoked under 28 U. S. Code, Section 1254(1) and (2), entitled, "Court of Appeals: certiorari; appeal;..."

QUESTIONS PRESENTED

The questions presented by this petition for writ of certiorari to the United States Court of Appeals for the First Circuit include:

1. The denial to the petitioner of due process in an action commenced in the United States District Court for the District of Massachusetts, wherein four judges of the State Court of the Commonwealth of Massachusetts were named defendants in an action involving a Federal Question based upon the petitioner's allegation that the judges violated Federal Law and deprived the petitioner of his constitutionally-guaranteed rights.

2. The denial to the petitioner of due process by the United States District Court, when the dismissal of the petitioner's action in the Federal Court resulted in not overturning the State action, which the petitioner claims was an action pursued without authority and in contravention of Federal Law.

3. The denial to the petitioner of due process by means of a fair trial on a Federal Question, when the United States District Court dismissed

the petitioner's action, and said dismissal was affirmed, without hearing, by the Circuit Court of Appeals.

STATUTORY PROVISIONS INVOLVED

United States Code, Title 28, Sections 1446 (a) and (e), as follows:

> "Section 1446. Procedure for Removal
>
> (a) A defendant or defendants desiring to remove any civil action or criminal prosecution from a State court shall file in the district court of the United States for the district and division within which such action is pending a verified petition containing a short and plain statement of the facts which entitle him or them to removal together with a copy of all process, pleadings and orders served upon him or them in such action.
>
> (e) Promptly after the filing of such petition and bond the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the petition with the clerk of such State court, which shall effect the removal and the State court shall proceed no further unless and until the case is remanded.

In the original complaint filed in the United States District Court, the petitioner claimed

jurisdiction under 28, U. S. Code, Section 1[illegible], which reads as follows:

"Section 1445. Civil rights cases

Any of the following civil actions or criminal prosecutions, commenced in a State court may be removed by the defendant to the district court of the United States for the district and division embracing the place wherein it is pending:

(1) Against any person who is denied or cannot enforce in the court of such State a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof;

(2) For any act under color of authority derived from any law providing for equal rights, or for refusing to do any act on the ground that it would be inconsistent with such law.

STATEMENT OF THE CASE

On November 22, 1971, the petitioner, Robert V. Pace, brought an action in the United States District Court for the District of Massachusetts, Civil Action No. 71-2684-M, naming as defendants four judges from the Superior Court of Middlesex County, as well as others, all of whom the petitioner alleged had acted in concert

and/or had contributed to deprive the petitioner of his civil rights, and Federally-protected rights, by violating Federal Law in contravention of U. S. Code Title 28, Section 1446(e)

Civil Action No. 71-2684-M, dated November 22, 1971, was dismissed on December 19, 1972, not have been tried on its merits, with a claim by the judge of the United States District Court that the petitioner lacked sufficient facts with which to support his claims.

The petitioner appealed the dismissal mentioned above on December 23, 1972, and said appeal was dismissed as being frivilous by the United States Court of Appeals for the First Circuit on February 28, 1973, without a hearing.

REASONS FOR GRANTING THE WRIT

Petitioner bases his petition on the following grounds:

(1) Rule 19(b) of this Court provides for consideration of an important question of Federal Law which has not been, but should be, settled by this

Court; and for consideration of the departure of a lower court from the accepted and usual concept of judicial decency and fair play.

(2) When the petitioner removed the State case in which he was defendant to the Federal District Court, according to Federal Statute U. S. Code Title 28, Section 1446(e), the State Court could proceed no further. However, the State court did proceed and held a trial without jury, after the defendant (petitioner herein) had been brought into the state court under a witness subpoena. As a result of said trial, the defendant/petitioner was adjudged guilty and sentenced.

(3) As a result of the above trial in the State court, which was held after removal to the United States District Court had been effected, the defendant/petitioner filed a complaint in the United States District Court against the four judges and others who were involved in the proceedings which led to the said trial. This complaint was Civil Action No. 71-2684-M.

(4) The petitioner claims to this Court that the judges against whom action was taken had acted in contravention of U. S. Code Title 28, Section 1446(e), and that the action against the said judges should have been heard by the United States Dis-

trict Court, since the petitioner did present sufficient evidence of the proceedings in the State court by reading a State court transcript excerpt to the Judge of the United States District Court

(5) On December 14, 1972, a hearing was held before Judge Freedman of the United States District Court for the District of Massachusetts relevant to the defendants' motions to dismiss the action in that court, C. A. No. 71-2684-F. At that hearing the petitioner asked Judge Freedman for leave to read into the court record an excerpt from the transcript of the proceedings before Judge Kalus in the Middlesex County Superior Court, in which proceeding the petitioner pointed out to the lower court judge that the case had been removed from the Superior Court to the United States District Court, and that the Federal Rules of Civil Procedure state that once the removal is effected, the State can proceed no further. Leave was given to read the transcript, and the petitioner read to Judge Freedman's United States District Court the excerpt as follows:

* * *

"THE COURT: Are you ready for a hearing?

MR. PACE: No, your Honor.

THE COURT: I beg your pardon?

MR. PACE: No your Honor. This case had been removed, your Honor.

THE COURT: Removed where?

MR. PACE: To the Federal Court.

THE COURT: I have no record of this case being removed to the Federal Court. Do you have some papers?

MR. PACE: Yes, I have.

THE COURT: Give them to the Clerk.

THE CLERK: What he has is what we have there, Judge.

THE COURT: Let's take what he has.

THE CLERK: What do you have, sir?

MR. PACE: This certified copy. (1)

THE COURT: Well, this is a certified copy of a petition you filed in the United States District Court for the District of Massachusetts, in which you ask a demand for a jury trial. The case has not been removed, and the mere fact you have filed a petition--

MR. PACE: Your Honor, the Federal Rules of Civil Procedure specify that when a petition

---

(1) See page A-6 for copy of certified petition for removal which had been filed with the clerk of the State court and which Judge Kalus had in front of him at the time of the above remarks.

for removal has been filed in the Federal Court and a copy has been given to the State Court, it shall effect a removal and the State can proceed no further.

* * *

THE COURT: Excuse me. Are you a lawyer?

MR. PACE: I'm not an attorney, but it's right here--

THE COURT: Excuse me. I'm not saying that-- Even without being a lawyer, you may be correct in the law. Do you want to be heard?

MR. WITKIN:[2] If I might give you some background, your Honor, if I may?

THE COURT: Let's stay with the question of whether under the Federal procedure that the filing of a petition and then notice to the State court of the filing of the petition, per se, stays the proceedings.

* * *

THE COURT: Was the matter heard before Judge Lurie, this argument about staying the proceedings?

MR. WITKIN: It was, your Honor.

MR. PACE: Your Honor--

THE COURT: Excuse me. Who represented the defendant then?

MR. WITKIN: How, as he has always been, to my knowledge, and that goes back to August of

---

(2) Roger Witkin, attorney representing adverse party in the State court

1969, the defendant appears pro se.

THE COURT: The Court rules that the proceedings will-- are not and will not be stayed.

MR. WITKIN: Thank you, your Honor.

* * *

(6) The preceding excerpt from the transcript shows beyond a reasonable doubt that the State court knew well that it was circumventing Federal Law and that it was denying the petitioner/defendant the remedies afforded him under Federal Law. Also, the transcript shows that the petitioner was before a State court which was full of prejudice and bias and, under such conditions, a fair trial as guaranteed under the Constitution would be impossible. Furthermore, the transcript shows that the State court knew well that the proceedings could advance no further and that the State was compelled to defer to constitutional, congressional and Federal Law; however, the State did proceed. The petitioner cites the following cases with reference to the voidibility and erroneousness of actions considered by a lower court after removal had been effected: Kern v Huidekoper, Ill. 1881, 103 U.S. 485, 26 L.Ed, 354; McCullough v Large, C.C.Pa.

1884, 20 F. 309; Ferris v Farnsworth Television & Radio Corp., D.C.N.Y. 1947, 8 F.R.D. 489.

(7) The petitioner sought to void the decision of the State court by bringing an action in the United States District Court and, when the District Court chose to dismiss the action, it left the petitioner to the mercy and whims of the State court, which could, and did, violate the petitioner's Constitutionally-guaranteed rights to a fair trial.

CONCLUSION

This Honorable court should grant this petition for a writ of certiorari to review the errors of the Court of Appeals for the First Circuit in affirming the dismissal of the petitioner's complaint of violations of Federal Law and Civil Rights, doing so particularly in the exercise of this court's supervision over the conduct of officers of any State court in the United States.

Respectfully submitted,

May 25, 1973

ROBERT V. PACE
Petitioner
P. O. Box 172
Lexington, Mass. 02173
617-275-8422

Appendix A

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 73-1001

ROBERT V. PACE
Plaintiff, Appellant

v

LEVIN H. CAMPBELL ET AL.,
Defendants, Appellees

ORDER OF COURT

Entered February 28, 1973

Upon consideration of appellees' motion for summary judgment,

It is ordered that the appeal herein be, and the same hereby is, dismissed under Rule 12 as frivolous.

The Court reserves action on appellees' motion for vexatious costs until a bill of costs is submitted.

By the Court:

DANA H. GALLUP, Clerk

By /s/ Francis P.Scigliano
Chief Deputy Clerk

Appendix B

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ROBERT V. PACE

v

CIVIL ACTION
No. 71-2684-F

LEVIN H. CAMPBELL ET AL.

ORDER

December 19, 1972

FREEDMAN, D.J.

After due consideration by this court of oral arguments and written memoranda of law, and a study of the entire pleadings in this matter, it is ORDERED that the motion of the defendants, Levin H. Campbell, Andrew R. Linscott, Reuben L. Lurie and Karry Kalus, to dismiss be allowed.

With complete deference to the fact that the plaintiff is a layman and representing himself in this action, and that the subject complaint is an amended one, and granting the plaintiff every reasonable opportunity to have his day in court, I cannot, following our own Federal Rules of Civil Procedure, Rule 8(a), justify any claim which he has put forward under which he can recover.

It is an accepted rule that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Conley v Gibson, 355 U.S. 41, 45-46 (1957).

It became clear that if the plaintiff truly believes that any of the four instant defendants committed error in their capacities as judges of the Massachusetts Superior Court that his proper relief was by a bill of exceptions to the Massachusetts Supreme Judicial Court rather than by this action in the federal court.

For the foregoing reasons, it is ORDERED that the above-entitled action be, and is hereby dismissed.

/s/ Frank H. Freedman

District Judge

Appendix C

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ROBERT V. PACE

v

LEVIN H. CAMPBELL ET AL.

CIVIL ACTION
No. 71-2684-F

ORDER

December 19, 1972

FREEDMAN, D.J.

After due consideration by this court of oral arguments and written memoranda of law, and a study of the entire pleadings in this matter, it is ORDERED that the motion of the defendants, Robert S. Welsh, Priscilla P. Welsh and Roger Witkin, to dismiss be allowed.

With complete deference to the fact that the plaintiff is a layman and that the subject complaint is an amended one, and granting the plaintiff every reasonable opportunity to have his day in court, I cannot, following our own Federal Rules of Civil Procedure, Rule 8(a), justify any claim which he has put forward under which he can recover.

It is an accepted rule that a complaint should not be dismissed for failure to state a claim which would entitle him to relief. Conley v Gibson, 355 U.S. 41, 45-46 (1957).

Since the plaintiff's case falls in this category, it is ORDERED that the above-entitled action be, and is hereby dismissed.

/s/ Frank H. Freedman
District Judge

Appendix D

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ROBERT V. PACE

CIVIL ACTION

v

No. 71-2684-F

LEVIN H. CAMPBELL ET AL.

JUDGMENT OF DISMISSAL

December 19, 1972

FREEDMAN, D.J.

Pursuant to the Orders entered by this Court on December 19, 1972, it is hereby ORDERED:

Complaint is dismissed.

By the Court,

/s/ Susan A. Tebo
Deputy Clerk

/s/ Frank H. Freedman
UNITED STATES DISTRICT JUDGE

Appendix E

IN CLERK'S OFFICE
Oct 13 1 18 PM '71
U.S. DISTRICT COURT
DISTRICT OF MASS.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

Priscilla P. Welsh
Plaintiff

v

No. 71-2237-M

Robert V. Pace
Defendant

PETITION FOR REMOVAL

Demand for Jury Trial

Your petitioner, Robert V. Pace, comes before this honorable court and petitions for removal from Middlesex County Superior Court in equity within the Commonwealth of Massachusetts to United States District Court for the District of Massachusetts, pursuant to U. S. Code, Title 28, Section 1441, for the following reasons:

1. The United States District Court gained original jurisdiction over the subject matter, which is cohesively related to and part of cases Nos. 69-1219-M and 68-528 entitled "Pace vs. Edward King et als" and "In the Matter of Bedford Aviation", respectively, both of which are presently before this honorable court.

2. In addition, this case is removable for reason that the petitioner demands a trial by jury guaranteed under the laws and articles of the constitution of the United States - said trial by jury being denied by state statute as shown in the attached Petition for Attachment for Contempt.

I hereby attest and certify on OCT 15 '71, that the foregoing document is a full, true and correct copy of the original on file in my office, and in my legal custody.

RUSSELL A. [illegible]
CLERK, U.S. DISTRICT COURT
DISTRICT OF MASSACHUSETTS
By: [illegible] Deputy

3. Further, the United States District Court has original jurisdiction over violations of civil rights, pursuant to the Civil Rights Act of 1964, as amended in 1967.

4. Your petitioner is unable to enforce his rights, including that of trial by jury, which are guaranteed under the constitution of the United States.

5. In the above-referenced action, the original jurisdiction lies in the United States District Court and therefore is removable.

CASES CITED

(a) The right to remove exists, when the federal courts are given original concurrent, though not exclusive, jurisdiction of the subject of the action. Nichols v Chesapeake & Oh. Ry. Co., 1907, 105 S.W. 481, 32 Ky. Law Re. 270.

(b) To render an action removable to a federal court, it is necessary that it could have been originally brought in the federal

court. Metcalf v. Watertown, Wis. 1888, 9 S.Ct. 173, 128 U.S. 586, 32 L.Ed. 543. See also:

In re Winn, Iowa 1909, 29 S.Ct. 515, 215 U.S. 458, 53 L.Ed.873;

In re Dunn, Tex. 1909, 29 S.Ct. 299, 212 U.S. 374, 53 L.Ed. 558, 562;

Ex parte Wisner, Mo. 1905, 27 S.Ct. 150, 203 U.S. 449, 51 L.Ed. 264;

Cochran v Montgomery County, Ala. 1905, 26 S.Ct. 58, 199 U.S. 260, 50 L.Ed. 182, 4 Ann. Cas. 451;

Madisonville Traction Co. v St. Bernard Min.Co., Ky. 1905, 25 S.Ct. 251, 196 U.S. 239, 49 L.Ed. 462.

(c) Jurisdiction of the state court, in which an action is commenced, is essential to confer jurisdiction upon a federal court to which it is removed. Wabash Western R. Co. v Brow, Mich. 1896, 17 S.Ct. 126, 164 U.S. 271, 41 L.Ed. 431. See also: National Acc. Soc. v Spiro, Mich. 1896, 17 S.Ct. 996, 164 U.S. 281, 41 L.Ed. 435.

Robert V. Pace

October 15, 1971

AFFIDAVIT OF SERVICE

I, Robert V. Pace, make oath that I have this day made service on the respondents of this Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit, by depositing in the United States Postal Service, with first class postage prepaid, four copies addressed to Charles Mark Furcolo, Esquire, c/o Massachusetts Attorney General, The State House, Boston, Massachusetts, and three copies addressed to Roger Witkin, Esquire, 73 Tremont Street, Boston, Massachusetts, 02108.

May 25, 1973

Robert V. Pace
P. O. Box 172
Lexington, Ma.02173
617-275-8422

72-6830

MICHAEL RODAK, JR.

In the Supreme Court of the United States

OCTOBER TERM, 1972

No.

ROBERT V. PACE,
PETITIONER,

v.

LEVIN H. CAMPBELL, et al.,
RESPONDENTS.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF IN OPPOSITION

ROBERT H. QUINN,
Attorney General
WALTER H. MAYO III,
Assistant Attorney General
CHARLES MARK FURCOLO,
Assistant Attorney General
373 State House
Boston, Massachusetts 02133

Blanchard Press, Inc., Boston, Mass. — Law Printers

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In the
Supreme Court of the United States

OCTOBER TERM, 1972

No.

ROBERT V. PACE,
PETITIONER,

v.

LEVIN H. CAMPBELL, et al.,
RESPONDENTS.

BRIEF OF THE RESPONDENTS, LEVIN H. CAMPBELL, ANDREW R. LINSCOTT, REUBEN L. LURIE AND HARRY KALUS, INDIVIDUALLY, AND AS THEY ARE OR WERE JUDGES OF THE MASSACHUSETTS SUPERIOR COURT, IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

Opinions Below

The order and opinion of the Court of Appeals (Appendix A, page A-1, of the Petition for Writ of Certiorari) is not yet reported. The orders and opinions of the District Court (Appendices B, C and D, pages A-2, A-3, A-4 and A-5 of the Petition for Writ of Certiorari) are not yet reported.

Jurisdiction

The judgment of the Court of Appeals (Appendix A, page A-1, Pet.) was entered on February 28, 1973. The Petition for Writ of Certiorari was filed on May 25, 1973. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

Question Presented

The question presented is whether the District Court's judgment that the petitioner's substitute complaint should be dismissed for failure to comply with Rule 8(a) of the Federal Rules of Civil Procedure was proper.

Constitutional Provisions and Statutes

The gravamen of the Petition for Writ of Certiorari is set forth in paragraphs two (2) and three (3) on page seven (7) of the Petition:

> "(2) When the petitioner removed the State case in which he was defendant to the Federal District Court, according to Federal Statute U.S. Code Title 28, Section 1446(e), the State Court could proceed no further. However, the State court did proceed and held a trial without jury, after the defendant (petitioner herein) had been brought into the state court under a witness subpoena. As a result of said trial, the defendant/petitioner was adjudged guilty and sentenced.
>
> (3) As a result of the above trial in the State court, which was held after removal to the United States District Court had been effected, the defendant/petitioner filed a complaint in the United States District Court against the four judges and others who were involved

> in the proceedings which led to the said trial. This complaint was Civil Action No. 71-2684-M."

In support thereof, petitioner includes as Appendix E, pages A-6, A-7 and A-8 of his Petition, a Petition for Removal which he filed on October 15, 1971, in the United States District Court for the District of Massachusetts. However, petitioner has failed to include anywhere in the Appendices to his Petition for Writ of Certiorari his two earlier Petitions for Removal with respect to the same state court case. The first Petition for Removal was filed on August 16, 1971, in the United States District Court for the District of Massachusetts, and was remanded to the state court on August 25, 1971. (Appendix A, page , of this Brief.) The second Petition for Removal was filed on September 1, 1971, in the United States District Court for the District of Massachusetts, and was again remanded to the state court. (Appendix B, page , of this Brief.) Each of the three Petitions for Removal (1) involved the same state court case, *Priscilla P. Welsh* v. *Robert V. Pace*, Middlesex County Superior Court, Equity Number 32494, and (2) attempted to remove said case from the state court to the United States District Court for the District of Massachusetts.

Consistent with the Remand Orders of August 25, 1971, and September 1, 1971, the respondent Kalus declined to stay the proceedings at the state court level. As a result of Judge Kalus' decision not to stay the state court proceedings, on November 26, 1971, petitioner filed a complaint with the United States District Court for the District of Massachusetts in which he sought injunctive and other equitable relief to enjoin an alleged deprivation of his rights, privileges and immunities as secured by the United States Constitution and Laws. The complaint was dismissed for failure to comply with Rule 8(a) of the Federal Rules of

Civil Procedure (Appendix C, page , of this Brief), leave to amend was denied, and petitioner appealed. On appeal, the Court of Appeals reversed, holding that petitioner was entitled to file one substitute complaint, which he did (Appendix D, pages , of this Brief). Motions to dismiss were filed by the respondents, and the District Court dismissed the substitute complaint. On appeal, the Court of Appeals summarily affirmed (Appendix A, page A-1, Pet.). This petition followed.

Argument

The District Court's Dismissal of Plaintiff's Complaint was Proper.

The instant case is not one in which a complaint has been dismissed as a technical matter of pleading or where dismissal was for reasons not going to the merits. Rather, the instant case is one in which the District Court considered the complaint on its merits and, in the prudent exercise of i's sound discretion, determined that the petitioner could not, as required by Rule 8(a) of the Federal Rules of Civil Procedure, prove any set of facts in support of his claim which would entitle him to relief. *Conley* v. *Gibson*, 355 U.S. 41, 45-46 (Appendices B and C, pages A-2, A-3, A-4, Pet.).

Neither is the instant case one in which a plaintiff has been denied an opportunity to amend his complaint. See *Ballou* v. *General Electric*, 393 F.2d 398 (C.A. 1, 1968). To the contrary, in the instant case petitioner has, by order of the Court of Appeals, already amended his complaint.

Finally, it should be noted that on two separate occasions petitioner's petitions for removal were not only denied by the District Court, but also, on each of those occasions, the District Court remanded the case to the State Court. *Welsh* v. *Pace*, U.S.D.C., D. Massachusetts, No. 71-1667-W (August 25, 1971); *Welsh* v. *Pace*, U.S.D.C., D. Massachusetts, No.

71-1667-W (September 1, 1971). Clearly, the District Court was of the opinion that the proceedings were not in fact removable. "The rule that proceedings in the state court subsequent to the petition for removal are valid if the suit was not in fact removable is the logical corollary of the proposition that such proceedings are void if the case was removable." *Metropolitan Casualty Ins. Co.* v. *Stevens*, 312 U.S. 563, 566. And, it is well-established that "the issue of removability is closed if the federal district court refuses to assume jurisdiction and remands the cause." *Metropolitan*, *supra*, at 568.

Conclusion

The petition for a writ of certiorari should be denied.

Respectfully submitted,

ROBERT H. QUINN,
Attorney General
WALTER H. MAYO III,
Assistant Attorney General
CHARLES MARK FURCOLO,
Assistant Attorney General
373 State House
Boston, Massachusetts 02133

June, 1973

APPENDIX A

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

Civil Action No. 71-1667-W

PRISCILLA P. WELSH
PLAINTIFF
v.
ROBERT V. PACE
DEFENDANT

PETITION FOR REMOVAL

This action is being removed from the Middlesex Superior court within the Commonwealth of Massachusetts Number 32494 in equity to the United States District Court for the District of Massachusetts, pursuant to U.S. Code Title 28, Section 1446—for reason of among others that the same action is presently before the U. S. District Court for the District of Massachusetts. In an action entitled Pace v. King No. 69-1219-M with statement and exhibits attached herewith.

(s) ROBERT V. PACE
ROBERT V. PACE

August 16, 1971

This case is remanded to the State Court because (1) the petition is not verified, and (2) it does not state facts which would entitle relief.

(s) WYZANSKI, C.J.
Aug. 25, 1971

APPENDIX B

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

Civil Action No. 71-1667-W

PRISCILLA P. WELSH
PLAINTIFF
v.
ROBERT V. PACE
DEFENDANT

PETITION FOR REMOVAL
Amended

This action is removed from the Middlesex Superior Court within the Commonwealth of Massachusetts No. 32494 in equity to the United States District Court for the District of Massachusetts, pursuant to U. S. Code Title 28, Section 1446—for reason of among others that the same action is presently pending before the U. S. District Court for the District of Massachusetts, in an action entitled Pace v. King, No. 69-1219-M, and further, attached to this petition for removal are certified copies which verify this petition (amended), and a statement of facts which entitles the defendant to removal, per instructions of Chief Justice Wyzanski by order, dated August 25, 1971, on the original petition for removal, dated August 17, 1971.

(s) ROBERT V. PACE
ROBERT V. PACE

Aug. 31, 1971

"This case is remanded
to the State Court."
(s) WYZANSKI, D.J.
Sep 1, 1971

APPENDIX C

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 71-2684-M

ROBERT V. PACE
PLAINTIFF

v.

LEVIN H. CAMPBELL, individually, and in his capacity as a Judge for the Commonwealth of Massachusetts, ET AL.,
DEFENDANTS

MEMORANDUM

MURRAY, D.J. In this action plaintiff seeks to have this court review a restraining order issued by the Superior Court of Middlesex County, which apparently restrained the activities of plaintiff vis-a-vis Mrs. Priscilla P. Welsh. Jurisdiction is alleged under 28 U.S.C. §§ 1343 and 1443, and 42 U.S.C. § 1985.

Close and detailed examination of the complaint reveals that it is prolix and vague. Factual allegations are so obscure and disjointed that this court will be put to great effort and an inordinate expenditure of time in an attempt to unravel them. Rule 8(a) of the Federal Rules of Civil Procedure establishes clearly that pleadings must contain *a short and plain* statement of the grounds upon which the court's jurisdiction depends, and of the claim upon which relief is demanded. Because of the failure to comply with this Rule, plaintiff's complaint is hereby dismissed.

(s) FRANK J. MURRAY
United States District Judge

Dated December 3, 1971

APPENDIX D

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

CIVIL ACTION 71-2684-M

ROBERT V. PACE
PLAINTIFF

v.

LEVIN H. CAMPBELL, individually, and in his capacity as a Judge for the Commonwealth of Massachusetts;
ANDREW R. LINSCOTT, individually and in his capacity as a Judge for the Commonwealth of Massachusetts;
REUBEN L. LURIE, individually, and in his capacity as a Judge for the Commonwealth of Massachusetts;
HARRY KALUS, individually, and in his capacity as a Judge for the Commonwealth of Massachusetts;
ROGER WITKIN, individually, and as he is a Member of the Federal Bar, and attorney for Defendant, Priscilla P. Welsh;
ROBERT S. WELSH, individually, and as he is a Chemist for the Cabot Corporation;
HELEN L. DREW, individually, and as she is President of Hero-Kinly Incorporated;
PRISCILLA P. WELSH, individually, and as a Clerk for Utica Mutual Insurance Company;
And all those who are in active concert with them.
DEFENDANTS

COMPLAINT AMENDED

1. The jurisdiction of this Court is invoked pursuant to United States Code Title 18, Section 241; Title 28, Sections 1443, 1446, 1447, 1448 and 2361; and Title 42, Sections 1983 and 1985.

2. This is a civil action seeking a Temporary Restraining Order, a Preliminary Injunction and a Permanent Injunction and other equitable relief, under color of local and state laws, to enjoin the deprivation of the Plaintiff's rights, privileges and immunities, secured by the United States Constitution and Laws.

3. Defendant Levin H. Campbell is or was a judge of the Superior Court of Middlesex County within the Commonwealth of Massachusetts, and Defendants Andrew R. Linscott, Reuben L. Lurie and Harry Kalus are judges at Superior Court within the Commonwealth of Massachusetts. Further Defendant Roger Witkin is or was attorney for Defendants Robert S. Welsh and Priscilla P. Welsh; and Defendant Helen L. Drew is or was a citizen of the Commonwealth of Massachusetts.

THE PLAINTIFF ALLEGES THAT:

4. On or about August 12, 1971, Defendant Levin H. Campbell executed an order against the Plaintiff, which order restrained and interfered with the Plaintiff's exercise of his federally-protected rights.

a. The above-mentioned order was issued ex parte and by application of attachment and bill of complaint;
b. The order was issued at a time when the Plaintiff had no knowledge even that proceedings had been initiated;
c. No showing was made that immediate irreparable damages would result in the absence of an order;
d. Irregularities in the proceedings prompted the Plaintiff to initiate a petition for removal from the State Court to the United States District Court for the District of Massachusetts. Certified copies were filed with the State Court.

5. On or about August 27, 1971, Defendant Andrew

R. Linscott extended the restraining order despite recitals by the Plaintiff that:

a. The instant case had been removed;
b. The Plaintiff was innocent of the charges;
c. The Plaintiff demanded to be heard and to be permitted to produce evidence in his own defense; and
d. He wished to submit to the Court facts that were material and substantially related to the case at hand.

6. On or about October 18, 1971, while the case was within the jurisdiction of the United States District Court for the District of Massachusetts, Defendant Reuben L. Lurie handed down a decision to proceed, notwithstanding the removal and with full knowledge of the following facts:

a. That the proceedings had been removed on October 15, 1971;
b. That the State Court could proceed no further while the removal was in effect;
c. That a certified copy of the removal had been filed with the State Court;
d. That an entry of the removal was made and officially docketed in the State Court and a certified copy of the removal had been filed with the State Court;
e. That the Plaintiff objected to any further proceedings by the State Court for the reasons stated above;
f. Justice Lurie proceeded without authority by assigning the case for trial, and objections and exceptions were taken by the Plaintiff.

7. On or about October 20, 1971, Defendant Harry Kalus, who had been assigned to the case by Justice Lurie, proceeded with a trial in a manner so far departing from any normal course of judicial proceedings, fair play and decency, as to shock the conscience.

a. Justice Kalus proceeded with obvious bias and prejudice and with complete disregard for the Constitutional rights of the Plaintiff, by overruling the objections, recitals and exceptions taken by the Plaintiff;

b. The proceedings were conducted in such a manner that the Plaintiff was brought into the Court under the guise of a witness summons, which witness subpoena was used cleverly to summon the Plaintiff into the Court;

c. The Plaintiff could not have prepared any defense, nor was he given an opportunity to counter balance;

d. The Plaintiff was forced to submit to a trial without counsel and without preparation;

e. The Plaintiff was denied his right to effectively confront and cross-examine his accuser;

f. Defendant Kalus allowed testimony by persons who were without standing in the Court and who did not take the witness stand and did not take the oath;

g. The Plaintiff was never permitted to prove himself innocent of the charges levied against him. No proof was introduced to support any charges against the Plaintiff; furthermore, Defendant Kalus was exceedingly impatient, biased and prejudiced against the Plaintiff, and actually interfered with the Plaintiff's cross-examination by refusing to permit the Plaintiff to cross-examine on matters that were allowed on direct examination.

8. This trial against the Plaintiff so far departed from the accepted and usual course of judicial proceedings and, by suppression and concealment of evidence, was so contrary to the overriding concepts of decency and fair play, that the State Court was prejudiced and biased against the Plaintiff and by such prejudice and bias, individually and

in concert did violate the Plaintiff's Federally-protected rights as outlined in the following counts:

THE PLAINTIFF FURTHER ALLEGES THAT:

COUNT I — Defendant Levin H. Campbell did issue, without authority, a Restraining Order, ex parte, while a pleading of identical nature had been previously presented to the United States District Court for the District of Massachusetts, by Defendant Roger Witkin, attorney for Defendant Priscilla P. Welsh, for reason given by the said Defendant Witkin, upon filing same with the United States District Court, that the action was related to another action then and now pending in the United States District Court for the District of Massachusetts; and by issuing this Restraining Order, ex parte, the said Defendant Campbell did violate the spirit and meaning of Rule 65 of the Federal Rules of Civil Procedure.

COUNT II — Defendant Andrew Linscott, by continuing an illegal Restraining Order which had been entered by Defendant Campbell and by acting in the instant case, while awaiting a decision on the application for Temporary Restraining Order which had been filed in the United States District Court for the District of Massachusetts, did violate the spirit and meaning of Rule 65 of the Federal Rules of Civil Procedure.

COUNT III — Defendant Reuben Lurie did, on October 18, 1971, assign for trial the instant case, while this case was in the jurisdiction and purview of the United States District Court for the District of Massachusetts, and had been since October 15, 1971, and by such assignment for trial after removal did violate U. S. Code Title 28, Sections 1443, 1446(e), 1447 and 1448.

COUNT IV — Defendant Harry Kalus did, on October 20, 1971, proceed with a trial without jury, while this case was in the jurisdiction and purview of the United States District

Court for the District of Massachusetts, and had been since October 15, 1971, and by proceeding after removal did violate U. S. Code Title 28, Sections 1443, 1446(e), 1447 and 1448.

Count V — Defendants Priscilla Welsh and Helen Drew did conspire, concert and combine to interfere with the Plaintiff's rights to legal redress by due process, and by so doing violated U. S. Code Title 18, Section 241, and U. S. Code Title 32, Section 1985.

Count VI — Defendants Roger Witkin, Priscilla Welsh and Robert Welsh did arrange to bring fraudulent, malicious and unjustifiable charges against the Plaintiff, and by so doing did violate U. S. Code Title 18, Section 241, and U. S. Code Title 42, Section 1985.

Count VII — Defendants Levin Campbell, Andrew Linscott, Reuben Lurie, Harry Kalus, Roger Witkin, Priscilla Welsh, Robert Welsh and Helen Drew, directly or indirectly, did deliberately, wilfully and intentionally deprive the Plaintiff of his Constitutionally guaranteed rights by concerting, combining and conspiring under color of State law, statute, ordinance and usage; and they did subject the Plaintiff to unequal and unjust punishment and deprivation of his rights, privileges and immunities which are secured by the Constitution of the United States of America, in violation of U. S. Code Title 42. Section 1983.

Count VIII — Defendants Levin Campbell, Andrew Linscott, Reuben Lurie, Harry Kalus, Roger Witkin, Priscilla Welsh, Robert Welsh and Helen Drew, directly or indirectly, did concert, combine and conspire with malice aforethought deliberately and intentionally against the rights of the Plaintiff, in an attempt to obstruct justice and intimidate parties and witnesses of the Plaintiff, and further did impede, hinder, obstruct and defeat the Plaintiff in his search for legal redress by due process, and with full intention did deny the Plaintiff his equal protection

under the law and did injure him for lawfully attempting to enforce his rights under the equal protection clauses of the Constitution of the United States, in violation of U. S. Code Title 28, Section 1443, and U. S. Code Title 42, Section 1985.

THE PLAINTIFF FURTHER ALLEGES THAT:

A. There is no adequate remedy at law;

B. Unless this Most Honorable Court does duly allow, permit, issue or grant an immediate Temporary Restraining Order, the Plaintiff will continually be harassed, intimidated, threatened and arrested for exercising his Federal Constitutional rights under the Fourth, Fifth and Fourteenth Amendments of the Constitution of the United States and under the Civil Rights Act of 1964, as amended in 1967;

C. Unless the Defendants are immediately restrained and enjoined, they will continue to interfere with the Plaintiff's rights by arresting, prosecution and other intimidations and, further, fail to protect the Plaintiff's present and future rights of liberty, privileges, immunities deprived to the Plaintiff; and thereby be contrary to the Fourth, Fifth and Fourteenth Amendments of the Constitution of the United States.

WHEREFORE, THE PLAINTIFF PRAYS:

(1) That this Most Honorable Court issue immediately a Temporary Restraining Order restraining the Defendants Levin Campbell, Andrew Linscott, Reuben Lurie, Harry Kalus, Roger Witkin, Priscilla Welsh, Robert Welsh, and Helen Drew from harassing, intimidating, threatening and arresting the Plaintiff for exercising his Federal Constitutional rights under the Fourth, Fifth and Fourteenth Amendments of the Constitution of the United States and under the Civil Rights Act of 1964, as amended in 1967.

(2) That this Most Honorable Court issue immediately a Temporary Restraining Order and a Preliminary Injunc-

tion restraining and enjoining the Defendants, Levin Campbell, Andrew Linscott, Reuben Lurie, Harry Kalus, Roger Witkin, Priscilla Welsh, Robert Welsh, and Helen Drew, their agents, successors, employees and all those in active concert with them in their individual capacities and/or while acting under color and authority of law and/or while acting in the execution of their various duties in their respective positions, from deterring, impeding, discouraging, threatening, harassing, arresting, prosecuting, persecuting, punishing or otherwise interfering with the Plaintiff; or permitting others within their presence and/or under their direction to deter, impede, discourage, threaten, harass, arrest, prosecute, persecute, punish or commit any act of violence or otherwise fail to protect the Plaintiff in the exercise of Federal Constitutional rights, as guaranteed by the Civil Rights Act of 1964, as amended in 1967, and by the Fourth, Fifth and Fourteenth Amendments of the Constitution of the United States.

(3) That this Most Honorable Court Issue a Temporary Restraining Order and a Preliminary Injunction to prevent the Defendants from exerting high level, political and judicial influences to discourage and abate civil and criminal suits instituted by the Plaintiff for purposes of redress by due process, as guaranteed by the Fourth, Fifth and Fourteenth Amendments of the Constitution of the United States.

(4) That this Most Honorable Court issue a Temporary Restraining Order and a Preliminary Injunction restraining and enjoining the Defendants from combining and conspiring in any way that would interfere with or deny the Plaintiff's rights, as guaranteed under the Fourth, Fifth and Fourteenth Amendments of the Constitution of the United States.

(5) That this Most Honorable Court permanently enjoin the Defendants, their agents, successors and all others

in concert with them, in their individual capacities and or while acting under color of law, from deterring, impeding, harassing, intimidating, threatening, prosecuting, punishing or otherwise interfering with the Plaintiff's Constitutional rights and/or permitting others in their presence or under their instructions to deter, impede, harass, intimidate or threaten or commit any acts of violence, verbal abuse, destruction of property, or otherwise fail to protect the Plaintiff from the exercise of his Federal Constitutional rights of redress by due process guaranteed under the Fourth, Fifth and Fourteenth Amendments of the Constitution of the United States.

(6) That this Most Honorable Court grant such other, further, and different relief as the Court may deem just and equitable.

May 1, 1972

ROBERT V. PACE

Subscribed and sworn to, before me, this 3rd day of May, 1972.

My commission expires